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Subject: U.S. Supreme Court's Decision in Janus v. AFSCME Council 31 Is a Strike against Public Sector Unions
Date: Wednesday, June 27, 2018 2:52:55 PM

Courthouse

June 2018

U.S. Supreme Court's Decision in *Janus v. AFSCME Council 31* Is a Strike against Public Sector Unions

Public sector unions just suffered a tremendous blow when the United States Supreme Court voted 5 to 4 in the *Janus v. AFSCME Council 31* case, stripping away their ability to collect fees from non-members to cover the cost of collective bargaining and enforcing the contract.

This decision overturns the 1977 U.S. Supreme Court decision—*Abood v. Detroit Board of Education*—that allowed government worker unions to collect Fair Share fees from non-members to cover the costs of collective bargaining.

The concept of Fair Share fees is that everyone who benefits from union representation should pay his or her fair share for the cost of those benefits, such as higher salaries, better working conditions, and health and retirement plans—those items that fall under the umbrella of collective bargaining. The opposing view, and the one that prevailed in *Janus*, is that because collective bargaining affects public policy on such matters as education and taxes, it is political. Demanding that a union member pay for what is deemed political and may be inconsistent with his or her beliefs is contrary to the rights of free speech and association.

"For more than four decades public sector union workers have experienced the strength in numbers concept in its finest form via Fair Share fees," says Richard Felton, a partner in the law firm of Gordon, Edelstein, Krepack, Grant, Felton & Goldstein, LLP (GEK). "By law, no one is forced to join a union and no one is forced to pay fees that are used for polices or political candidates. The *Janus* decision won't change that. What it will do is reduce public sector unions' bargaining power in the 22 states that allow for the collection of Fair Share fees. The unions would still be legally responsible to represent workers, but many workers will become 'free-riders' who benefit from the representation without paying for it."

The face of this case is Mark Janus, a child support specialist at the State of Illinois Department of Healthcare and Family Services. He has worked for the state since 2007, and is represented by AFSCME, though he is not a union member. Fair share fees are deducted from his paycheck, equaling about 78 percent of full union dues. Janus and his legal team argued that everything a union does is political and related to First Amendment rights because the employer is a state or local government. The contract negotiations are with the government; therefore, the fees are a form of political advocacy.

The Court agreed with Janus's argument. "Compelling individuals to mouth support for views they find objectionable violates the cardinal constitutional command, and in most contexts, any such effort would be universally condemned," according to Justice Samuel Alito, author of the Court's opinion.

This same issue was front and center in 2016 in the case of *Friedrichs v. California Teachers Association*, which ended in a 4-4 deadlock with the death of Justice Antonin Scalia.

As was the case two years ago, we at GEK will steadfastly support our union brothers and sisters as they continue to fight for justice on behalf of their members. This latest attack on public sector unions, which will result in a loss of union income and membership, strengthens our resolve to support the labor movement, which has protected the common interests of workers for centuries.

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